

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK,

Plaintiff,

-against-

ANDREW WHEELER, in his official capacity as
Administrator of the United States Environmental
Protection Agency, and the UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY,

Defendants.

No. 19 Civ. 003287 (JMF)

STIPULATION AND ORDER REGARDING ATTORNEYS' FEES AND COSTS

WHEREAS, on April 12, 2019, plaintiff State of New York ("Plaintiff") filed the complaint in this action against defendants United States Environmental Protection Agency and Andrew Wheeler, Administrator ("Defendants" and, together with Plaintiff, the "Parties");

WHEREAS, the Final Judgment and Permanent Injunction of this Court filed July 25, 2019 (ECF No. 33), awarded Plaintiff its costs of litigation, including reasonable attorney's fees, in an amount to be fixed upon Plaintiff's application, and the Order filed July 25, 2019 (ECF No. 32), directed the parties to confer in an effort to resolve or narrow any disputes regarding the extent of Plaintiff's entitlement to costs and attorney's fees, and provided a deadline of October 15, 2019, for Plaintiff to file an application with respect to any remaining disputes; and

WHEREAS, the Parties seek to resolve Plaintiff's claim for attorney's fees on the terms provided herein, to avoid unnecessary and expensive litigation and without any admission of law or fact.

NOW, THEREFORE, Plaintiff and Defendants, without any admission of fact or law, agree as follows:

1. As soon as practicable, the United States shall pay \$36,500.00 to plaintiff State of New York by electronic funds transfer pursuant to instructions provided by counsel for Plaintiff. Counsel for Defendants shall notify counsel for Plaintiff in writing when the payment has been made. Such payment, upon receipt in full, releases the United States, including Defendants, from any claims regarding fees and costs that Plaintiff has asserted or could have asserted under any provision of law in connection with this litigation as of the date of entry of this Stipulation. Should the United States fail to make timely payment in full within 120 days of entry of this Order, the Plaintiff may return to the Court to seek enforcement of this Order, including any additional costs or fees associated with said enforcement.

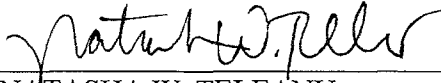
2. Any obligations of the United States to obligate or expend funds under this Order are subject to the availability of appropriated funds in accordance with the Anti-Deficiency Act, 31 U.S.C. §§ 1341-44 and 1511-19, and any other applicable provision of law. No provision of this Stipulated Order shall constitute or be construed as a commitment or requirement that the United States obligate or pay funds in contravention of said Anti-Deficiency Act or any other applicable provision of law.

3. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to consent to the entry of this Stipulation.

ON BEHALF OF DEFENDANTS EPA AND ANDREW WHEELER, ADMINISTRATOR:

Dated: October 10, 2019


GEOFFREY S. BERMAN
United States Attorney

By: 
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ON BEHALF OF PLAINTIFF STATE OF NEW YORK:

Dated: October 10, 2019

LETITIA JAMES
ATTORNEY GENERAL OF NEW YORK

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SO ORDERED on this 10th day of October, 2019.


HON. JESSE M. FURMAN
UNITED STATES DISTRICT JUDGE